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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,502	11/12/2003	Norberto Oscar Gomez	29953-190086	4759
26694	7590	08/14/2006	[REDACTED]	EXAMINER
VENABLE LLP				NGO, LIEN M
P.O. BOX 34385			[REDACTED]	ART UNIT
WASHINGTON, DC 20045-9998				PAPER NUMBER
				3754

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/705,502	GOMEZ ET AL.	
	Examiner LIEN TM NGO	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 and 12-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 12-35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8 -10 and 12-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo (5,046,877) in view of Grand et al.

Longo discloses, in figs, 1, 5 and 10, a caulking container 10 comprising a radially surrounding container sidewall 12 having a first end and a second end; and an elongated container nose 75 coupled to the container sidewall at the second end, wherein the container nose comprises a nose member tapering from a first diameter to a second diameter at an end distal to the container sidewalls the second diameter being smaller than the first diameter, and the nose encloses a channel 79 leading into a space surrounded by the container sidewall.

Longo does not disclose a dome coupled to the first end of the sidewall, a hinged connection formed between the dome and the sidewall, wherein the hinge connection enables the dome to flip from an outwardly projecting position to an inwardly projecting position, and a standing ring.

Grand et al. teach, a container having a dome coupled to the first end of the sidewall, a hinged connection formed between the dome and the sidewall, wherein the

hinge connection enables the dome to flip from an outwardly projecting position to an inwardly projecting position; and a standing ring.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Longo container with a dome coupled to the first end of the sidewall, a hinged connection formed between the dome and the sidewall, wherein the hinge connection enables the dome to flip from an outwardly projecting position to an inwardly projecting position, and a standing ring, as taught by Grand et al., in order to facilitate of filling the container content at the dome neck portion and to enable the container to stand on the standing ring when the dome is in the inwardly projecting position.

In regard to the method claims 13-26, the container of Longo, which is modified with a dome coupled to the first end of the sidewall, a hinged connection formed between the dome and the sidewall, wherein the hinge connection enables the dome to flip from an outwardly projecting position to an inwardly projecting position, and a standing ring, as taught by Grand et al., is capable of performing the step as claimed.

3. Claim 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo in view of Grand et al. and further in view of Cargile et al. (6,673,301).

Longo in view of Grand et al. does not disclose the container sidewall having an inset groove.

Cargile et al. teach a container sidewall having an inset groove 22.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Longo in view of Grand et al. with an inset groove on the container sidewall, as taught by Cargile et al., in order to provide a rigid support structure for container when the container is in the standing position.

***Response to Arguments***

4. Applicant's arguments filed 6/15/06 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Longo discloses, in figs. 1, 9 and 10, a container having limitations substantially as claimed, except Longo does not disclose a dome coupled to the first end of the sidewall, a hinged connection formed between the dome and the sidewall, wherein the hinge connection enables the dome to flip from an outwardly projecting position to an inwardly projecting position, and a standing ring.

Grand et al. teach, a container having a dome coupled to the first end of the sidewall, a hinged connection formed between the dome and the sidewall, wherein the

hinge connection enables the dome to flip from an outwardly projecting position to an inwardly projecting position; and a standing ring.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Longo container with a dome coupled to the first end of the sidewall, a hinged connection formed between the dome and the sidewall, wherein the hinge connection enables the dome to flip from an outwardly projecting position to an inwardly projecting position, and a standing ring, as taught by Grand et al., in order to facilitate of filling the container content at the dome neck portion and to enable the container to stand on the standing ring when the dome is in the inwardly projecting position.

5. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KEVIN SHAVER can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LIEN TM NGO  
Primary Examiner  
Art Unit 3754

August 9, 2006

